IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Writ Petition No.239 of 2005 (S/B)
(Old No. 8381 of 1989)

Date of decision :- 26.07.2007

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Date:- 26.07.2007 Initials of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARAKHAND, AT NAINITAL

Writ Petition No.239 of 2005 (S/B)

Dr. I.P. Saraswat (Retired Professor)
S/o late Pandit Devaki Nandan
R/o Solani Puram
Near Solani Kunj, Roorkee ...Petitioner

Versus

1. The University of Roorkee
   Through its Registrar
   University of Roorkee, Roorkee
2. State of Uttar Pradesh
3. State of Uttaranchal through Ministry of Education, Dehradun
4. Indian Institute of Technology, Roorkee
5. Union of India, Ministry of Human Resource Devt. Government of India, New Delhi ...Respondents

Delivery of Judgment :-26th July, 2007

Mr. Manoj Tewari, Advocate for the petitioner.
Mr. S. Dhulia, senior counsel with Mr. Rahul Kansal, Advocate for respondent no. 1 & 4.
Mr. Subhash Upadhyay, Brief Holder for the respondent no. 3.
Mr. Arvind Vashisht, Asstt. Solicitor General for respondent no. 5.

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ petition filed under Article 226 of the Constitution of India, the petitioner has sought the following reliefs:-

(i) Issued a writ, order or direction in the nature of certiorari quashing the order dated 27.01.1989 passed by the University and the order of the University dated 5.8.1986 (Annexure-4 to the petition).

(ii) Issue writ, order or direction in the nature of mandamus directing the University to take into consideration the service rendered by the petitioner in the Central Government for the

purpose of fixing pension and other retirement benefit to the petitioner.

(iii) Issue appropriate writ order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.

(iv) Award the cost of the proceedings to the petitioner.

2. The petitioner's case is that on 24.04.1944 he was employed in the office of Controller of Inspection, Ministry of Defence, Government of India and he was relieved from there on 14.05.1959. Thereafter, the petitioner joined the Atomic Energy Establishment (renamed as 'Bhabha Atomic Research Centre), Trombay, Bombay as Class-1 Gazetted Officer on 03.08.1959. The sad establishment was also a Central Government department. The petitioner remained in the Bhabha Atomic Research Centre upto 23.07.1962. Thereafter, the petitioner joined the University of Roorkee (renamed as 'I.I.T.Roorkee') on 01.08.1962 and retired as Professor on 07.07.1984. The petitioner was drawing gross salary of Rs. 4000/- per month at the time of retirement from the University. The State of U.P. issued G.O. No. 789/84/77/84 dated 22.09.1984 (Annexure-3 to the petition) in which it has been provided that the employees and the teachers would be entitled for pension and other reliefs on the same terms and conditions as are applicable to the State of Government employees. Pursuant to the said G.O. the petitioner opted for the family pension under the General Provident Fund Scheme and the University accepted the option of the petitioner. Prior to 1984, the petitioner was entitled for pension under the contributory fund scheme. The respondents without taking into consideration the service rendered by the

petitioner in the Central Government establishments and taking into consideration the length of services of the petition in the University fixed the pension of the petitioner as Rs. 547/- per month plus admissible dearness allowances vide order dated 05.08.1986 (Annexure-4 to the petition. The University sanctioned the pension of the petitioner without considering the services rendered by him in the Central Government department. According to the petitioner, the service rendered by him in the Central Government for a period of 18 years should be included while computing the pension of the petitioner. The petitioner approached the University authorities for inclusion of 18 years of service of the petitioner rendered in the Central Government for the purpose of fixation of pension by the University. Vide order dated 14.05.1986 the said request of the petitioner was not accepted by the University on the ground that the services rendered by the petitioner in the Central Government could have been considered only if the petitioner would have been on deputation. Thereafter, the petitioner made a representation dated 30.09.1988 to the Registrar of the University. On the said representation, the Registrar, University of Roorkee rejected the same vide impugned order dated 27.01.1989 on the ground that the petitioner was never taken on deputation basis and he joined as fresh appointee in the University. The Registrar, University of Roorkee has further communicated the petitioner that the services rendered at the University or affiliated colleges within the State only may be counted as qualifying service for pension benefits alongwith the services rendered at the University, hence the case of the petitioner is not covered under the pensions rules

admissible to the University. Feeling aggrieved by this, the present writ petition has been filed before this Court.

3. The representation no. 1–Roorkee University has filed the counter affidavit alleging therein that the petitioner joined the services in the office of Controller of Inspection, Ministry of Defence in the year 1944 and thereafter he worked in the Bhabha Atomic Research Centre from 03.08.1959 to 23.07.1962. Thereafter, the petitioner joined the University of Roorkee on 01.08.1962 and retired as Professor on 07.07.1984. The petitioner was drawing gross salary of Rs. 4000/- per month at the time of retirement from the University. It was further pleaded in the counter affidavit that the pension scheme was introduced at the Roorkee University vide G.O. dated 22.09.1984 and prior to 1.1.1984 the petitioner was covered like other employees under contributory provident fund scheme of the University. In para 6 of the said G.O. it was mentioned that earlier service prior to joining the present institution will be counted provided that it is within the State. Later on, a clarification was sought from the State Government and vide Government letter No.4801/85-22/85 dated 23.04.1986 intimated that no service rendered outside the U.P. State will be taken into account for pension benefits.

4. Heard learned counsel for the parties and perused the record.

5. It was vehemently argued by Mr. Manoj Tewari learned counsel for the petitioner that paras 1,2 & 7 of G.O. No. 789/84/77/84 dated 22.09.1984 (Annexure-3

to the writ petition) clearly indicated that the pension benefits and other reliefs as are applicable to the State employees are also applicable to the employees of the University. It was further contended that the State employees are entitled for the benefit of service rendered by them in the Central Government. It was further contended that the respondents had illegally denied for giving the service benefit of 18 years to the petitioner rendered in the Central Government. It was further contended that the impugned orders are illegal. Learned counsel for the respondents refuted contention and contended that para 2(6) of the aforesaid G.O. clearly provides that the earlier services prior to joining the present institution will be counted for the purpose of computing the pension if the earlier service has been rendered in the State institution under the State Government. It was further contended that the Government has issued a clarification on 23.04.1986 (Annexure-C.A.-I) which clearly indicated that the services rendered outside the State Government will not be taken into account for computing the pension benefits. Para 2(5) & (6) & para 7 are quoted below:-

> "2(5) इस शासनादेश द्वारा स्वीकृत सुविधाओं का लाभ केवल उन्हीं शिक्षकों / शिक्षणेत्तर कर्मचारियों को देय होगा जो अपने अंशदायी भविष्य निधि खाते में दिनांक 31 दिसम्बर 1983 तक सस्था के अशंदान के जमा समस्त धनराशि उस पर अर्जित संकलित ब्याज की संपूर्ण धनराशि सहित शासन के प्राप्ति शीर्षक ''077–शिक्षा– च–सामान्य (अ) अन्य प्राप्तियॉ (12) प्रकीर्ण '' में तथा अपने अशंदान की समस्त धनराशि उस पर अर्जित एवं संकलित ब्याज सहित निक्षेप लेखा –शीर्षक ''838–स्थानीय निधियों के निक्षेप–अन्य स्वायत निकायों के निक्षेप– (ख) अन्य सहायित शिक्षण संस्थाओं के स्कूलों /महाविद्यालयों /विश्वविद्यालयों के शिक्षक एवं शिक्षणतर कर्मचारियों की भविष्य निधियों के लेन देन के अंतर्गत एकमुस्त जमा करवायेंगें।..... ।
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> 2(6) पेंशन की धनराशि तथा मृत्यु तथा सेवा निवृति आनुताषिक की धनराशि निर्धारित करने के लिए 58 वर्ष की आयु तक विधिवत चयन एवं

अनुमोदन के आधार पर पूर्णकालिक पद पर संस्थाओ में नियुक्त होने पर की गई सेवाये ही आगणित की जायेगी। प्रदेश स्थित अन्य राज्य विश्वविद्यालय या अससे lc}@lg;Dr किसी अन्य गैर सरकारी सहायता प्राप्त महाविद्यालय में कर्मचारी के रूप में की गयी नियमित एवं पुर्णकालिक सेवावधि को इस प्रयोजन हेतु संस्थान की अंहकारी सेवा में तभी जोडा जायेगा जब कि संबन्धि शिक्षक/शिक्षणेत्तर कर्मचारी ने लगातार सेवा की है जैसा कि सी0एस0आर0 के आर्टीकल 370 में प्राविधान है और सी.एस. आर. के पैरा 418 ए. और बी. द्वारा निर्धारित शतें पूरी होती हों तथा शिक्षक /शिक्षणेतर कर्मचारी द्वारा अपनी पूर्व संस्था में अशंदायी भविष्य निधि में प्राप्त सम्पूर्ण विश्वविद्यालयी/प्रबंधकीय/राज्य सरकार के अंशदान एवं उस राशि पर राजकीय कोषागाार में जमा करने की तिथि तक, अर्जित समस्त संकलित ब्याज सहित समस्त धनराशि कोषागार में संगत लेखा शीर्षक में जमा कर दी जाए।

7. मुझे यह भी कहने का निदेश हुआ है कि विश्वविद्यालय के वित अधिकारी /लेखाधिकारी अथवा प्रधानायार्य/निदेशक को यह भी सुनिश्चित करना होगा कि किसी शिक्षक 2 शिक्षणेतर कर्मचारी की विश्वविद्यालय/संस्था में सेवाकाल के पूर्व अन्य संस्थाओ में की गई सेवा के बीच कोई व्यवधाना कार्यभार ग्रहण करने की अवधि को छोडकर नहीं होना चाहिए। यदि ऐसा कोई व्यवधान हो तो उसे पेंशन के प्रयोजनों के निमित सेवा अवधि में नहीं जोडा जायेगा इस हेतु वित्त अधिकारी / लेखधिकारी/प्रधानाचार्य निदेशक को यह इगित करना होगा कि उन्होंनें पूर्व संस्थाओं में सेवा अवधि की भी जांच कर ली है और किन्हीं दो संस्थाओं के बीच में हुए व्यवधान को सेवावधि में शामिल नहीं किया गया है । वित्त अधिकारी /लेखाधिकारी /प्रधानाचार्य /निदेशक भविष्यनिधि आदि से स्थायी एवं अन्तिम आहरण, पेशंन एवं म....त्यु एवं सेवानिवत्ति आनुतापिक आदि की स्वीक...ति की संस्तुति करते समय निम्नलिखित विवरण भी प्रस्तुत करेगें

6. Clause 6 of the aforesaid G.O. clearly indicates that the past services in the organizations of the State Government will only be taken into account. The respondents had also filed a clarification of the State Government in which it is specifically mentioned that the services rendered outside the State of U.P. in other department would not be taken into account for computing the pension of such employee. The Roorkee University was a State University at the time when the

petitioner was retired and the State Government provided all funds to the University and the University has to follow all the directions given to it in the Govt. orders.

7. The Government had issued a clarification on 23.04.1986 (Annexure-C.A.-I) which clearly indicates that the services rendered outside the State Government will not be taken into account for computing the pension benefits. The relevant portion of the said clarification dated 23.04.1986 is quoted below:-

विभिन्न प्राविधिक डिग्री स्तरी शिक्षण संस्थाओ द्वारा निवृत्तिक लाभ दिए जाने के सम्बन्ध में सुझाव । प्रस्ताव एवम जिज्ञासाओं पर शासन का निणय

	सुझाव / प्रस्ताव /जिज्ञासा	शासन का निर्णय
1	.....	.....
2	.....	.....
3	.....	.....
4	.....	.....
5	राजकीय कार्यालयों अर्ध सरकारी कार्यालयों रीजनल इन्जिनियरिंग कालेजों के केन्द्रीय विश्वविद्यालय,आई0आई0टी0 में की गई सेवाओं को अहंकारी सेवा के लिए आगणित किया जाय।	इसे स्वीकार करना संभव नहीं है।

8. It is not disputed by the parties that the petitioner has rendered his services in the Central Government w.e.f. 24.04.1944 to 14.05.1959 in the Controller of Inspection, Ministry of Defence, Government of India. It is also not disputed that the petitioner worked in the Bhabha Atomic Research Centre, Trombay, Bombay as Class-I Gazetted Officer from 03.08.1959 to 23.07.1962. The said establishment was also a Central Government department. It is also not disputed that the petitioner joined the University on 01.08.1962 as a fresh appointee. Learned counsel for the petitioner could not

demonstrate us that he was taken on deputation from the Central Government to the Roorkee University.

9. Learned counsel for the petitioner relied upon the G.O. No. 28(10)84-P&PW-Vol.II which is quoted below:-

"No.28 (10) / 84-P&PW-Vol.II
Government of India /Bharat Sarkar Ministry of Personal, Public Grievance & Pension Dept. of Pension & Pensioners'Welfare
The 7-2-86
6th Floor, Nirvachan Sadan,
Ashoka Road, New Delhi-110001.

To
The Chief Secretaries of All the
State Governments.

Subject :- Counting of service for purposes of pension of employees of central Government and Central Autonomous Bodies seeking absorption in Autonomous Bodies under the State Government and Vice-versa.

Sir,

I am directed to say that in August 1984, Central Government had issued orders that where a Central Government employees borne on pensionable establishment ***is allowed to be absorbed in a Central Autonomous Body having a pension scheme of its own, the services rendered by him under the Government shall be allowed to be counted towards pension under the Autonomous Body*** *irrespective of whether the employees was temporary or permanent in Government, subject to certain conditions. The same procedure will apply in the ….. of employees of the Autonomous Bodies who are permanently absorbed under the Central Government. Certain employees of the State Governments and State Autonomous Bodies who joined the Central Government bodies/ Statutory Bodies, have also represented that their services under the State Government/ State Autonomous Body may be allowed to be counted towards pension under Central Autonomous Body where they are presently working. Similarly, certain Central Government servants and employees of the Central Autonomous Bodies / Statutory Bodies might have joined Autonomous Bodies / Statutory Bodies excluding public undertakings of the State Government and may be desirous of getting the benefit of counting of service under Central Government/ Autonomous Bodies towards pension in the organization where they are presently working.*

2. In the circumstances explained above, it was felt that reciprocal arrangements may be entered into with the

various State Governments to the effect that where employees of the State Governments/State Autonomous Bodies/State Statutory Bodies, have been absorbed in the Central Autonomous Bodies, they may be allowed the same benefits as have been extended to the central Government servants and vice-versa.

3. The question of extension of various benefits like counting of service etc., in the cases of (i) employees of the Central Government absorbed in State Autonomous Bodies, and (ii) employees of Central autonomous Bodies absorbed in State Governments and State Autonomous Bodies, and Vice-Versa, has been considered in consultation with the State Governments. After careful consideration, the President has now been pleased to decide that these cases may be decided in accordance with the principles as laid down in the Department of Personnel and Administrative Reforms O.M. No. 28/10/84-Pension Unit dated 29.8.1984. (copy onclosed). The cases of Central Government servants appointed in State Governments and vice-versa will continue to be decided as hitherto.

4. Similar orders regarding counting of services of the Central Government employees in the event of their absorption in the State Autonomous Bodies and employees of the Central Autonomous Bodies in the State Governments, and State Autonomous Bodies as well as orders regarding acceptance of pension liability etc., in respect of State Government and State Autonomous bodies employees absorbed in Central Autonomous Bodies and employees of State Autonomous Bodies absorbed in Central Government will be issued by the respective State Government.

5. These orders shall apply to employees of the State Government and State Autonomous Bodies moving to Central Government / Central Government Autonomous Bodies in respect of the State Government listed below:-

(i) Karnataka, (ii) Madhya Pradesh (iii) Punjab (iv) Rajasthan (v) Sikkim (vi) Tripura (vii) West Bengal (viii) Uttar Pradesh (ix) Bihar (x) Gujarat (xi) Assam (xii) Meghalaya & (xiii) Himanchal Pradesh

These orders shall be extended to the employees of other State Government as and when they agree to similar reciprocal arrangements.

6. These orders will apply to the employees of the Central Government moving / State Autonomous Bodies and employees of Central Autonomous Bodies to the State Government and their Autonomous Bodies mentioned in para 5 above and vice versa who are in service on the date of issue of these orders, irrespective of the date of their absorption.

> *7. So far as persons serving in the Indian Audit and Accounts Department are concerned, those orders issue after consultation with the Comptroller and Auditor General of India."*

10. While going through the said G.O. it is revealed that the said G.O. is only applicable where a central government employee is taken in the State government or vice versa on deputation and that employee has been absorbed after deputation either in the State Government or in the Central Government, as the case may be, and in that case the services rendered by him in his previous department would be counted for the purpose of pension benefits, but the G.O. did not indicated that it would be applicable in cases where the Central Government employee had relinquished his earlier service by way of quitting the service and even then he would be entitled for counting his services for computing the pensionery benefits. Thus, the said G.O. is not applicable in this case.

11. In view of the foregoing discussion, we are of the view that the respondent no.1-Universiry of Roorkee was justified in rejecting the prayer of the petitioner on the ground that the pension benefits for the services rendered by the petitioner in Central Government could have been considered only if he would have been on deputation in the University and the G.O. dated 22.09.1984 provides that the services rendered at University of affiliated colleges within the State only may be counted as qualifying service for pension alongwith the services rendered at the University. We do not find any infirmity in the impugned orders passed

by the respondents. Therefore, the writ petition is devoid of merit and is liable to be dismissed.

12. The petition is hereby dismissed. No order as to costs.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C.J.)**

Dated 26th July, 2007
LSR